

**SALES AND USE TAX REVIEW COMMISSION
RECOMMENDATION PURSUANT TO P.L. 1999, C. 416**

BILL NUMBER:

A-3679

DATE OF INTRODUCTION:

November 20, 2006

SPONSOR:

Assemblyman Giblin

DATE OF RECOMMENDATION:

June 28, 2007

IDENTICAL BILL:

COMMITTEE:

Assembly Budget Committee

DESCRIPTION:

This bill exempts charges for postage in distribution of direct mail processing services from sales and use tax.

ANALYSIS:

This bill is proposed to amend the Sales and Use Tax Act, N.J.S.A. 54:32B-1, et. seq., to reinstate the exemption for charges on postage used in connection with the distribution of direct mail processing services. The bill excludes receipts from postage paid to deliver direct mail processing services if the charges for postage are separately stated on an invoice, bill, or similar document presented to the purchaser.

Prior to October 1, 2006, charges for the delivery of goods and services were not subject to sales tax. On and after October 1, 2006, the exemption for delivery charges was modified, whether or not separately stated from the purchase price of an item on the invoice, bill or similar document given to the purchaser. N.J.S.A. 54:32B-2(oo)(1). The law currently provides for the taxation of delivery charges on taxable items and retains the exemption for delivery charges on nontaxable items.

Effective October 1, 2006, the definition of "sales price" is

(1) "Sales price" is the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(A) The seller's cost of the property sold;

(B) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(C) Charges by the seller for any services necessary to complete the sale;

(D) **Delivery charges;**

(E) Installation charges; and

(F) The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

See N.J.S.A. 54:32B-2(oo) (emphasis added).

Since October 1, 2005, the law defines “Delivery Charges” as charges by the seller for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, **postage**, handling, crating, and packing. N.J.S.A. 54:32B-2(rr). If a shipment includes both exempt and taxable property, the seller should allocate the delivery charge by using: (1) a percentage based on the total sales price of the taxable property compared to the total sales price of all property in the shipment; or (2) a percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment. N.J.S.A. 54:32B-2(rr). Thus, only the portion of the delivery charge that relates to the taxable property or services is subject to tax.

Sales tax is imposed on sales of direct mail material as well as direct mail processing services; however, there is an exemption for direct mail material delivered to out-of-State recipients, as well as for the direct mail processing services performed in connection with such material. N.J.S.A. 54:32B-8.39; N.J.S.A. 54:32B-3(b)(5). Processing services are described as addressing, separating, folding, inserting, sorting and packaging advertising material and transporting to the point of shipment.

In other words, effective October 1, 2006, “sales price” includes delivery charges. Since postage is the means by which direct mail is delivered (delivery is part of the processing service), it is now part of the “sales price,” because the definition of “delivery charges” includes postage.

Thus, postage charged to a customer as part of a receipt for direct mail processing services where the property is delivered out-of-State is not taxable. N.J.S.A. 54:32B-8.39. However, for direct mail processing services where the property is delivered to a location in this State, since “postage” is specifically included in the definition of “delivery,” the postage expense is part of the taxable receipt, whether or not separately stated to the customer. Since delivery charges only refer to charges made by the seller of goods and services, the purchase of postage directly from the United States Postal Service remains nontaxable.

If this bill is not enacted, the industry will simply resort to self help strategies. Specifically, the direct mail customer will simply purchase the postage from the United States Postal Service directly or establish an account with the United States Postal Service that the direct mail seller can utilize.

The Committee is concerned that the passage of this bill may violate the Streamlined Sales and Use Tax Agreement. In addition, since the subject matter of this bill is currently a matter of discussion in the State and Local Advisory Council, the Committee stated that it is prudent to wait on the enactment of this bill.

RECOMMENDATION: The Commission does not recommend enactment of this Bill.

COMMISSION MEMBERS FOR PROPOSAL: 3

COMMISSION MEMBERS AGAINST PROPOSAL: 6

COMMISSION MEMBERS ABSTAINING: 0

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